

1731219 (Migration) [2018] AATA 4097 (4 September 2018)

DECISION RECORD

DIVISION: Migration & Refugee Division

CASE NUMBER: 1731219

MEMBER: Simone Burford

DATE: 4 September 2018

PLACE OF DECISION: Perth

DECISION: The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa

Statement made on 04 September 2018 at 2:40pm

CATCHWORDS

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner (Temporary) visa – insufficient evidence of relationship – lived together for two years – no joint assets or liabilities – relationship breakdown – non-judicially determined claim of family violence – no statutory declaration from the applicant to support claims – no evidence that cl 820.221 criteria applies to the applicant – decision under review affirmed

PRACTICE AND PROCEDURE – sponsor sought to withdraw Tribunal application – application for review was not validly withdrawn – sponsor removed as applicant's representative

LEGISLATION

Migration Act 1958 (Cth), ss 5CB, 5F, 359AA

Migration Regulations 1994 (Cth), rr 1.09A, 1.21, 1.23, 1.24, 1.25, 2.03A Schedule 2 cls 820.211, 820.221

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 378 of the Migration Act 1958 and replaced with generic information.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration on 4 December 2017 to refuse to grant the applicant a Partner (Temporary) (Class UK) visa under s.65 of the *Migration Act 1958* (the Act).
2. The [applicant], applied for the visa on 19 December 2015 on the basis of her relationship with her [sponsor]. At that time, Class UK contained Subclass 820. The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the Migration Regulations 1994 (the Regulations).
3. The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria. Relevantly to this matter the primary criteria include cl.820.211 and 820.221 which require that at the time of application and decision, the applicant to be the spouse or de facto partner of the sponsor, unless the relationship has ceased and certain circumstances exist. These include that the applicant, or a member of the family unit, has suffered family violence committed by the sponsor: cl.820.211(8) or (9) and 820.221(3)(a) and (3)(b)(i). The applicant claims this occurred in this case.
4. The delegate refused to grant the visa on the basis that the applicant did not meet cl.820.211(2) because the delegate was not satisfied that the applicant was the spouse or de facto partner of the sponsor as defined under section 5F or 5CB of the Act.
5. When the application for review was filed the sponsor was listed as the applicant's representative. On 19 March 2018 the sponsor sought to withdraw the review application by filing withdrawal of application advice with the Tribunal. The sponsor indicated that the applicant was in the Philippines and that the relationship had broken down. In order to ascertain whether the applicant was aware that her application was being withdrawn the Tribunal requested the sponsor obtain her signature on the withdrawal form. The sponsor indicated that the applicant was unlikely to respond to his attempt to contact her and provided the Tribunal with contact details. The Tribunal contacted the applicant in the Philippines and verified her identity. The applicant confirmed it was not her intention to withdraw and that she was returning to Australia. The applicant completed a change of details form effectively removing the sponsor as her representative.
6. The Tribunal formed the view that the application for review was not validly withdrawn.
7. The applicant appeared before the Tribunal on 31 July 2018 to give evidence and present arguments. The Tribunal also received oral evidence from [Mr A], a friend of the applicant. The applicant was also given time to provide any further information following the hearing. A further extension was requested and granted. Additional material was received subsequent to the hearing and has been taken into account in reaching this decision.
8. The hearing was conducted with the assistance of an interpreter in the Tagalog and English languages.
9. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

RELEVANT LAW

10. At the time the application was made, Class UK contained Subclass 820. The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the Migration Regulations 1994 (the Regulations). Relevantly to this matter the primary criteria include cl.820.211 and 820.221 which require that at the time of application and decision, the applicant to be the spouse or de facto partner of the sponsor, unless the relationship has ceased and certain circumstances exist. These include that the applicant, or a member of the family unit, has suffered family violence committed by the sponsor: cl.820.211(8) or (9) and 820.221(3)(a) and (3)(b)(i).
11. In the present case, the applicant claims the relationship with the visa sponsor has ceased, and she has been the victim of family violence.
12. On 17 April 2018 the applicant was sent an 'Invitation to Comment on or Respond to Information and to Provide Information' by the Tribunal. The invitation invited her to comment on, or respond to, certain information which the Tribunal considered would, subject to his comments or response, be the reason or part of the reason for affirming the decision under review, being information provided to the Tribunal which indicated that the relationship with the sponsoring partner had ended and the applicant had returned to the Philippines.
13. In response to the invitation the applicant emailed the Tribunal on 1 May 2018 indicating that
 14. *"as you already know the relationship has been broken down without my knowledge about it. I only learned about it when I received a phone call from your office confirming me of the situation of my status. When I applied for the appeal, I'm still in very good terms with my partner.."*
15. The email went on to state:
 16. *"I'd like to let you know that during the period of two years and three months that we are together, my partner [name deleted], I've suffered from his hands on three separate occasions. He choked me, throw water on my face and verbally abuse me. I know I should have told the police about it but since I really love him I just kept quiet. I didn't want him to get in trouble with the police authority. He is also an alcoholic as he consumes a lot of alcohol every day. I always give him a chance to change but it did not work."*
17. The statements contained in the email were consistent with the testimony she provided at the hearing.
18. At the hearing the Tribunal outlined for the applicant the consequences of the relationship breakdown for her application. The Tribunal explained to the applicant that the Tribunal needed to be satisfied that at the time the application was made that the applicant and the sponsor were in a de facto relationship as defined in s.5CB. The Tribunal explained that this meant it needed to be satisfied that the applicant and sponsor to mutual commitment to a shared life to the exclusion of all others, a relationship that was genuine and continuing and that they were living together or not separately and apart on a permanent basis. The Tribunal indicated that in order to assess this it needed to consider all the circumstances of the relationship including the matters set out in r.1.09A of the Migration Regulations. The Tribunal explained that for de facto relationships there was an additional requirement that the relationship existed 12 months prior to the application being made unless there were compassionate and compelling reasons for the requirement to be waived.

19. The Tribunal explained that it would normally have to be satisfied that the s.5CB criteria are met at time of decision. However, as the relationship had broken down, it would need to be satisfied that one of the exceptions to the continuing relationship requirement was met.
20. The Tribunal outlined for the applicant the limited circumstances, set out in cl.820.221(2) and cl.820.221(3) of the Act, in which an applicant may meet the criteria for the grant of a visa notwithstanding the breakdown of the relationship, namely where:
 - The relationship ceased to exist because the sponsoring partner dies;
 - The sponsoring partner has committed domestic/family violence against the applicant or a member of the applicant's family unit; or
 - Both the applicant and the sponsoring partner have an ongoing connection to a child.
21. There was no evidence before the Tribunal, and no claim was made, which would indicate any of the criteria contained in cl.820.221(2) and cl.820.221(3) applies to the applicant.
22. The Tribunal outlined the relevant family violence provisions of the Act to the applicant including the evidentiary provisions. The Tribunal provided a copy of the relevant legislative instrument outlining the evidentiary requirements for a claim of non-judicially determined family violence under the Act: IMMI 12/116. The Tribunal provided the applicant with additional time following the hearing to submit any additional evidence in relation to her claim of relevant family violence.
23. Under r.1.23 of the Regulations, a person is taken to have suffered or committed family violence if there is evidence tested before a court; or the visa application includes a non-judicially determined claim of family violence, and either the Minister (or the Tribunal on review) is satisfied that the alleged victim has suffered relevant family violence or an opinion of an independent expert has been given that the alleged victim has suffered relevant family violence. Relevant family violence is defined in r.1.21. The Tribunal notes that the violence, or part of the violence must have occurred during the relationship: r.1.23(3), (5), (7), (12), (14).
24. In the present case before the Tribunal the applicant is seeking establish family violence on the basis of a non-judicially determined claim of family violence.

CONSIDERATION OF CLAIMS AND EVIDENCE

25. Was the applicant the de facto partner of the sponsor?

26. 'De facto partner' is defined in s.5CB of the Act and provides that a person is in a de facto relationship with another person to whom they are not married if they have a mutual commitment to a shared life to the exclusion of all others, the relationship is genuine and continuing, the couple live together, or do not live separately and apart on a permanent basis, and the couple are not related by family: s.5CB(2).
27. In forming an opinion whether they are in a de facto relationship, consideration must be given to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the visa applicant's and review applicant's household and their commitment to each other as set out in r.1.09A(3) which is attached to this decision.
28. The Tribunal has before it the Department of Home Affairs' (the Department) file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's

decision, which was provided to the Tribunal by the review applicant, and other material available to it, including material submitted by the parties prior to and following the hearing.

29. The applicant gave evidence at the hearing. The Tribunal questioned her at length about the relationship. The Tribunal also took evidence from [Mr A], a friend of the parties regarding the relationship and breakdown.
30. The Tribunal notes that there was limited evidence before the Department in support of the relationship. The applicant provided additional information to the Tribunal including a number of third-party statutory declarations from friends of the parties supporting the relationship and the applicant's account of its history.
31. The Tribunal found the applicant and [Mr A] to be candid and credible witnesses and accepts their oral evidence on this basis. The Tribunal has considered their oral evidence, and the statements of their supporting witnesses, together with the additional documentary evidence submitted at the review stage in reaching its findings.

32. *Adverse material*

33. Complying with the obligations under s.359AA of the Act, the Tribunal raised with the applicant anonymous source information on the Department's file concerning an allegation that the relationship was contrived for the purposes of gaining a visa.
34. The Tribunal put to the applicant that there was information before the Tribunal that the sponsor's intention was to bring the applicant to Australia to be a nanny for his two grandchildren and that the applicant was only interested in the relationship to come to Australia.
35. The Tribunal adjourned the hearing for a short period to give the applicant time to consider the information and her comments in response. The Tribunal also indicated it would accept further written submissions addressing the information. The applicant indicated she would respond to the information at the hearing. The Tribunal indicated any further responses or information could be provided within 14 days of the hearing. No further submissions on this point were received following the hearing.
36. At the hearing the applicant indicated that the information was not true. She stated that she and the sponsor were in a genuine relationship and that when she came to Australia his grandchildren were no longer living with him as they had returned to live with their father. They visited on weekends but they did not live with him and they did not have responsibility for looking after them.
37. The Tribunal accepted the applicant's evidence. As the allegation was anonymous and lacked any detail the Tribunal has not placed any weight on the information in reaching its decision.

38. *Relationship background*

39. The applicant testified that she and the sponsor met in December 2010 via an Internet dating site. They began talking on the phone regularly and agreed to meet in April 2011 in [Country 1] where the applicant was living and had been for the prior years. The sponsor travelled to [Country 1] and stayed a week. Four months later he visited [Country 1] again and stayed a week. In between the visits the applicant and sponsor maintained contact via telephone.
40. In 2011 the applicant injured her knee and return to the Philippines where she had surgery. The sponsor travelled to the Philippines to see the applicant four times following her injury

with each visit at about 7 to 10 days. He stated at the home of the applicant in the Philippines and met her children and other relatives. During this period they travelled together in the Philippines.

41. The applicant testified that the sponsor asked her to come to Australia and indicated he wanted to marry her. She indicated that she would go to Australia after her knee injury healed. Several years following the accident the wire in her knee was removed and following another four months recovery time the applicant decided to travel to Australia with the sponsor. The couple claimed to have entered into a de facto relationship on 20 August 2013. The records are consistent with the sponsor having made six trips during the period where the parties claimed to be in a relationship.
42. On [date] October 2015, the sponsor's birthday, the applicant came to Australia. The applicant met the sponsor's friends during a two-day visit in [Town 1] and then travel to [Town 2]. They travelled to the sponsor's [property] outside [Town 2] where they stayed from. They then moved into the sponsor's house in [Town 2]. They applied for a Partner visa in December 2015.
43. In [Town 2] the sponsor was working as a [Occupation 1] and [Occupation 2] in [Town 2] and the applicant got a job at [Organisation 1]. They adopted an RSPCA dog.
44. The parties live together for just over two years until the applicant returned to the Philippines in December 2017 to attend the wedding of her nephew. The applicant gave evidence that this plan was agreed with the sponsor. She was scheduled to return from the Philippines at the end of January but due to the separation of her son from his wife she testified she had to stay in the Philippines several additional months to assist her son during this period.
45. The applicant indicated that when she was in the Philippines the sponsor informed her that he had commenced a relationship with another woman and sent her photos of the woman.

46. *Evidence of relationship*

47. the applicant provided the following information in support of the application on the Department file:
 - a handwritten history of relationship from [the applicant]
 - a handwritten signed statement from [the sponsor]
 - letters of support from [Father B] on, [Ms C], [Mr D], [Mr A], [Ms E]
 - identity documents for [the applicant] including a driver's license issued to her at the sponsor's address in [Town 2]
 - medical records for the applicant
 - correspondence addressed to the applicant at the sponsor's address in [Town 2]
 - statement in relation to the opening of the joint account at [Bank 1] in December 2015
 - a statement from the applicant in relation to a previous relationship in the Philippines

- Confirmation that the applicant did not appear on the National Indices of Marriages for the Philippines.

48. In addition [the applicant] provided the following information to the Tribunal:

- Photographs of the sponsor's property and of the parties together and with others
- Receipts for food shopping in 2017
- Utility bills in the name of the sponsor and his former wife
- Statements from a joint bank account for the applicant and sponsor
- A death certificate for the sponsor's former wife
- Identity documents
- Supporting statements from [Mr F], [Dr G], [Mr H] and an additional statement from [Father B]
- a letter from the applicant and sponsor in relation to the applicant returning to the Philippines in December 2017 and returning in January 2018
- a statement by the applicant dated 18 August 2018.

49. The applicant provided financial information which reflected the parties' financial circumstances. The applicant gave oral evidence she was working at [Organisation 1] in [Town 2]. The applicant indicated that the sponsor was not financially supporting her while she would was in the Philippines; however he would occasionally spend send money to her children as a gift. He paid for travel to Australia. Once in Australia they shared expenses. However each had their own separate bank accounts in addition to the joint account. Their home was in the name of the sponsor and his former wife (now deceased) as with utility accounts. The applicant indicated that these were primarily met by the sponsor.

50. To her knowledge they had no joint assets or liabilities. They bought a car together but it was in the sponsor's name. The applicant was not aware of the relationship being declared to any government departments.

51. While the applicant were unable to provide anything other than very limited documentary evidence of the couple's financial circumstances, the Tribunal accepts her oral evidence as to the nature of the financial arrangements which are consistent with the statements on the file from the sponsor. The Tribunal finds that the parties' financial arrangements were consistent with a genuine de facto relationship at the time the application was made.

52. The Tribunal has had regard to the evidence regarding the nature of the parties' household including any joint responsibility for care and support of children; parties' living arrangements; and any sharing of housework. The parties do not have any children together, however the applicant testified that the sponsor had met to 2 grown children in the Philippines. Further the applicant testified that the sponsor's two grandchildren regularly stayed with them on weekends in [Town 2]. This was consistent with statements made by the sponsor which appear on the file.

53. The applicant did not have evidence of the parties sharing a household prior to the applicant moving to Australia. However, given their circumstances the Tribunal does not place any

weight on the lack of a shared household for this period. The Tribunal finds that the parties living arrangements at the time of application were consistent with a genuine de facto relationship.

54. The Tribunal has considered the evidence regarding the social aspects of the parties' relationship including whether they represent themselves to other people as being in a de facto or spousal relationship with each other; the opinion of friends and acquaintances about the nature of the relationship; and any basis on which the persons plan and undertake joint social activities.
55. The applicant attested to meeting the sponsor's family members including attending a family reunion with him. She also stated he had met her family and extended family several times in the Philippines. Evidence on the file suggests they were active as a couple in social engagements with the Filipino community in [Town 2].
56. The parties provided evidence of their social interaction as a couple in the form of photographs with friends and family and supporting statements from friends particularly from the community in [Town 2]. The applicant provided a range of supporting statements from third parties regarding the relationship including from friends of the sponsor's. These included statements from the applicant's local parish priest, the parties' doctor and the principal of the local Catholic school.
57. [Father B], the parish priest, provided a detailed letter outlining his engagement with the applicant since his arrival in Meriden in February 2017. He also notes that he met the sponsor on a number of occasions. [Father B] notes that the applicant approached him to talk about her living arrangements and what she might do in the church given that she was in a de facto relationship. [Father B] notes that in his view *'this was clear evidence of her being fully committed to a de facto relationship and living as a couple'*. [Father B] notes his surprise at the fact that the couple were not regarded by the Department as being in a genuine relationship. He notes observing the couple providing emotional support and love to one another particularly following the visa refusal.
58. The applicant's doctor, [Dr G], stated that the sponsor told her of the relationship prior to the coming to Australia and spoke of his love for her and plans to bring her to Australia. She also states he attended the applicant's first consultation with her. She indicates the applicant lived with the sponsor in [Town 2] and that they attended events of the Filipino community together.
59. [Mr H], the Principal of [School 1] in [Town 2], states he has known parties for three years and that they are known in the local parish as a couple. He attests to the parties' commitment to each other. Similarly, [Mr F], a friend of the parties, provided a statement supporting their account of the relationship.
60. [Mr A] gave oral testimony supporting the applicant's account of the relationship noting that he and his wife spent time with the applicant and sponsor as a couple including in their home. [Mr A] also attested to being told by his wife of an incident of violence during the relationship. He also attested that the relationship has ended and [the applicant] has stayed with him and his wife since her return to Australia.
61. The Tribunal found [Mr A] to be a credible witness and accepts his evidence. The Tribunal also places weight on the third party statements which were provided as evidence that the relationship was genuine at the time of application.
62. The evidence portrays a couple who were committed to each other and recognised as being in a genuine and committed relationship by their friends and local community. The Tribunal

is satisfied based on the evidence, and taking into account the fact the parties' relationship was conducted at a distance in its initial stages, that the parties represent and conduct themselves socially in such a way as to indicate a genuine and continuing relationship at the time the application was made.

63. The Tribunal has also had regard to evidence pertaining to the nature of parties' commitment to each other. This includes the duration of the relationship; the length of time they have lived together; degree of companionship and emotional support they draw from each other; and whether they see the relationship as long-term.
64. The parties claimed to have met in 2011 and entered into a committed de facto relationship in 2013. They lived together in Australia for over two years prior to the relationship breaking down. The applicant testified that the sponsor supported her while she was injured in the Philippines and her through her settling in Australia. Third party testimony suggests that the parties provided emotional support to one another during the relationship.
65. The delegate raised a concern regarding the applicant's prior relationship in the Philippines. The Tribunal raised this with the applicant and finds on the evidence that the relationship ended some years before she entered into a relationship with the sponsor.
66. The Tribunal is in no doubt the applicant was committed to the relationship. She was candid in her evidence and has strong third party support. While the Tribunal was unable to speak to the sponsor there is sufficient evidence of on the file to conclude that the sponsor was committed to the applicant staying in Australia as his partner. He was personally managing her application up to the point where she left for the Philippines. While the abruptness of the breakdown raises some questions about the level of his commitment to the relationship, the Tribunal finds on the evidence that at the time of the application he was committed to the applicant and the relationship in a manner consistent with a genuine de facto relationship.
67. The Tribunal is satisfied that at the time the application was made, the parties had a mutual commitment to a shared life to the exclusion of all others, their relationship was genuine and continuing and they lived together or not separately and apart on a permanent basis. The Tribunal is also satisfied the parties are not related by family.
68. On the basis of the evidence, the Tribunal is satisfied the applicant and the sponsor were in a de facto relationship and that this relationship has ceased. The issue that arises on the evidence in this case is whether the applicant has suffered family violence committed by the sponsor, within the meaning of the Regulations.
69. The Tribunal notes that for visa applications made on or after 1 July 2009, the definition of 'de facto partner' is contained wholly within s.5CB, and the additional criteria for de facto relationships in r.2.03A are not included in that definition. In light of the Tribunal's findings relating to whether a claim of family violence has been made, which are outlined below, the Tribunal has not made findings on whether the applicant meets the additional criteria in r.2.03A, which would, in the absence of compelling and compassionate circumstances, need to be met for the visa to be granted.

Has a claim of family violence been made under the regulations?

70. In the present case the applicant is seeking to establish family violence on the basis of a non-judicially determined claim of family violence.
71. Under r.1.23, a visa application is taken to include a non-judicially determined claim of family violence where either a joint undertaking to a court has been made by the alleged victim and alleged perpetrator or evidence in accordance with r.1.24 is provided.

72. Under r.1.23 of the Regulations, a person is taken to have suffered or committed family violence if there is evidence tested before a court; or the visa application includes a non-judicially determined claim of family violence, and either the Minister (or the Tribunal on review) is satisfied that the alleged victim has suffered relevant family violence or an opinion of an independent expert has been given that the alleged victim has suffered relevant family violence. Relevant family violence is defined in r.1.21. The Tribunal notes that the violence, or part of the violence, must have occurred during the relationship: r.1.23(3), (5), (7), (12), (14).
73. The applicant in this case is seeking to rely on evidence referred to in r.1.24 – namely, a statutory declaration under r.1.25 and evidence of a type and number specified by the Minister for these purposes.
74. A statutory declaration under r.1.25 must be made by the spouse or partner of the alleged perpetrator. If the alleged victim is the spouse or partner, the statutory declaration must set out the allegation of family violence, name the person alleged to have committed the relevant family violence and if the *conduct* was not directed at the spouse or partner, name the person to whom it is directed and their relationship with the deponent: r.1.25(2). There are different requirements if the family violence is alleged to have occurred to another person: r.1.25(3).
75. The only evidence submitted by the applicant which deals with the issue of alleged family violence was an unsigned letter from the applicant submitted to the Tribunal on 22 August 2018. In addition, the applicant and [Mr A] gave oral evidence at the hearing regarding the incidents of alleged family violence involving the applicant and sponsor.
76. The Tribunal finds that the letter from [the applicant] does not meet the requirements of a statutory declaration under r.1.25. Further, while the Tribunal accepts the evidence of the applicant and [Mr A] and found they were credible witnesses, the applicant has not provided evidence in support of her claim of a type and number specified by the Minister for these purposes. The Tribunal notes that these requirements were outlined for the applicant at the hearing and she was provided with a copy of the relevant legislative instrument outlining the evidentiary requirements for a claim on non-judicially determined family violence under the Act.
77. Therefore, the evidence presented does not meet the requirements of r.1.24. As such, a non-judicially determined claim of family violence has not been made under r.1.23.
78. Given the above conclusion that the claim of family violence has not been established, the applicant does not meet the requirements of cl.820.221(3) for the grant of the visa. There is no evidence before the Tribunal that the applicant meets any of the alternative sub criteria. As the applicant does not meet an essential criterion for the visa, the Tribunal must affirm the decision under review.

DECISION

79. The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa

Simone Burford
Member

ATTACHMENT – EXTRACTS FROM THE MIGRATION REGULATIONS 1994

1.21 Interpretation

In this Division:

independent expert means a person who:

- (a) is suitably qualified to make independent assessments of non-judicially determined claims of family violence; and
- (b) is employed by, or contracted to provide services to, an organisation that is specified, in a legislative instrument made by the Minister, for the purpose of making independent assessments of non-judicially determined claims of family violence.

non-judicially determined claim of family violence has the meaning given by subregulations 1.23(8) and (9).

relevant family violence means conduct, whether actual or threatened, towards:

- (a) the alleged victim; or
 - (b) a member of the family unit of the alleged victim; or
 - (c) a member of the family unit of the alleged perpetrator; or
 - (d) the property of the alleged victim; or
 - (e) the property of a member of the family unit of the alleged victim; or
 - (f) the property of a member of the family unit of the alleged perpetrator;
- that causes the alleged victim to reasonably fear for, or to be reasonably apprehensive about, his or her own wellbeing or safety.

statutory declaration means a statutory declaration under the *Statutory Declarations Act 1959*.

violence includes a threat of violence.

...

1.23 When is a person taken to have suffered or committed family violence?

- (1) For these Regulations, this regulation explains when:

- (a) a person (the alleged victim) is taken to have suffered family violence; and
- (b) another person (the alleged perpetrator) is taken to have committed family violence in relation to the alleged victim.

Note Schedule 2 sets out which visas may be granted on the basis of a person having suffered family violence. The criteria to be satisfied for the visa to be granted set out which persons may be taken to have suffered family violence, and how those persons are related to the spouse or de facto partner of the alleged perpetrator mentioned in this regulation.

Circumstances in which family violence is suffered and committed — injunction under Family Law Act 1975

- (2) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if, on the application of the alleged victim, a court has granted an injunction under paragraph 114(1)(a), (b) or (c) of the Family Law Act 1975 against the alleged perpetrator.
- (3) For subregulation (2), the violence, or part of the violence, that led to the granting of the injunction must have occurred while the married relationship between the alleged perpetrator and the spouse of the alleged perpetrator existed.

Circumstances in which family violence is suffered and committed — court order

- (4) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if:
 - (a) a court has made an order under a law of a State or Territory against the alleged perpetrator for the protection of the alleged victim from violence; and
 - (b) [...] order was made after the court had given the alleged perpetrator an opportunity to be heard, or otherwise to make submissions to the court, in relation to the matter.

- (5) For subregulation (4), the violence, or part of the violence, that led to the granting of the order must have occurred while the married relationship or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator.

Circumstances in which family violence is suffered and committed — conviction

- (6) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if a court has:
- (a) convicted the alleged perpetrator of an offence of violence against the alleged victim; or
 - (b) recorded a finding of guilt against the alleged perpetrator in respect of an offence of violence against the alleged victim.
- (7) For subregulation (6), the violence, or part of the violence, that led to the conviction or recording of a finding of guilt must have occurred while the married relationship or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator.

Circumstances in which family violence is suffered and committed — non-judicially determined claim of family violence

- (8) For these Regulations, an application for a visa is taken to include a non-judicially determined claim of family violence if:
- (a) the applicant seeks to satisfy a prescribed criterion that the applicant, or another person mentioned in the criterion, has suffered family violence; and
 - (b) the alleged victim and the alleged perpetrator have made a joint undertaking to a court in relation to proceedings in which an allegation is before the court that the alleged perpetrator has committed an act of violence against the alleged victim.
- (9) For these Regulations, an application for a visa is taken to include a non-judicially determined claim of family violence if:
- (a) the applicant seeks to satisfy a prescribed criterion that the applicant, or another person mentioned in the criterion, has suffered family violence; and
 - (b) the alleged victim is:
 - (i) a spouse or de facto partner of the alleged perpetrator; or
 - (ii) a dependent child of:
 - (A) the alleged perpetrator; or
 - (B) the spouse or de facto partner of the alleged perpetrator; or
 - (C) both the alleged perpetrator and his or her spouse or de facto partner; or
 - (iii) a member of the family unit of a spouse or de facto partner of the alleged perpetrator (being a member of the family unit who has made a combined application for a visa with the spouse or de facto partner); and
 - (c) the alleged victim or another person on the alleged victim's behalf has presented evidence in accordance with regulation 1.24 that:
 - (i) the alleged victim has suffered relevant family violence; and
 - (ii) the alleged perpetrator committed that relevant family violence.
- (10) If an application for a visa includes a non-judicially determined claim of family violence:
- (a) the Minister must consider whether the alleged victim has suffered relevant family violence; and
 - (b) if the Minister is satisfied that the alleged victim has suffered the relevant family violence, the Minister must consider the application on that basis; and
 - (c) if the Minister is not satisfied that the alleged victim has suffered the relevant family violence:
 - (i) the Minister must seek the opinion of an independent expert about whether the alleged victim has suffered the relevant family violence; and
 - (ii) the Minister must take an independent expert's opinion on the matter to be correct for the purposes of deciding whether the alleged victim satisfies a prescribed criterion for a visa that requires the applicant for the visa, or another person mentioned in the criterion, to have suffered family violence.
- (11) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if:
- (a) an application for a visa includes a non-judicially determined claim of family violence; and

- (b) the Minister is satisfied under paragraph (10)(b) that the alleged victim has suffered relevant family violence.
- (12) For subregulation (11), the Minister must be satisfied that the relevant family violence, or part of the relevant family violence, occurred while the married relationship or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator.
- (13) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if:
 - (a) an application for a visa includes a non-judicially determined claim of family violence; and
 - (b) the Minister is required by subparagraph (10)(c)(ii) to take as correct an opinion of an independent expert that the alleged victim has suffered relevant family violence.
- (14) For subregulation (13), the violence, or part of the violence, that led to the independent expert having the opinion that the alleged victim has suffered relevant family violence must have occurred while the married relationship or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator.